

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 991 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KANAIYALAL MAGJIBHAI

Versus

GOPAL TALSHI

Appearance:

MR TH SOMPURA for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/04/2000

ORAL JUDGEMENT

1. The petitioner is the original defendant - tenant
against whom eviction suit was filed by the respondent
plaintiff in the court of Civil Judge (Junior Division),
Bhavnagar being Regular Civil Suit No.303/77. The

aforesaid suit was filed for getting the possession of the suit premises. That the defendant is the tenant of one room and osari paying the rent at the rate of Rs.15/per month. According to the plaintiffs, they need the suit premises for their personal bonafide occupation, and therefore, the provisions of Section 13(1)(g) of the Bombay Rent Act were invoked by the plaintiffs for getting the possession of the suit premises. It is also the case of the plaintiffs that the defendant has also got alternative accommodation and that alternative accommodation is sufficient to accommodate the defendant and his family members. It was, therefore, stated that the decree under section 13(1)(1) of the Bombay Rent Act may also be passed as the defendant has acquired suitable accommodation. Therefore, the suit for possession was filed on the aforesaid ground.

2. The defendant appeared in the suit and submitted his written statement at Exh.12. The defendant denied the suit of the plaintiffs in toto. According to the defendant the rent of the suit premises of Rs.15/- is excessive and exorbitant and prayed for fixation of the standard rent. He also preferred separate application being Misc.Civil Application No.49/72 for fixation of the standard rent. The defendant denied the claim of the plaintiffs for bonafide requirement. He stated that alternative accommodation did not belong to him, and therefore, the aforesaid suit was resisted on the aforesaid grounds by the defendant.

3. Learned trial Judge framed various issues and after recording the evidence of the parties, came to the conclusion that the plaintiffs' bonafide requirement is genuine. He also came to the conclusion that, if the eviction decree is not passed, the plaintiffs will suffer greater hardship as compared to the defendant. The trial court also found that the defendant has acquired alternative accommodation which is suitable for his residence. He, therefore, decreed the suit on the aforesaid two grounds. The trial court also fixed Rs.15/- as the standard rent and the standard rent application, that is, Misc.Civil Application No.49/72 was also accordingly disposed of.

4. The aforesaid decree of the trial court was challenged by the present petitioner - defendant by preferring appeal being Regular Civil Appeal No.154/82. The said appeal was heard by the Extra Assistant Judge, Bhavnagar who by his judgment and order dated 29.4.1983 dismissed the same with costs.

5. The petitioner - tenant has preferred this civil revision application under section 29(2) of the Bombay Rent Act challenging the order of the appellate court.

6. I have heard Mr.T.H.Sompura, learned advocate for the petitioner and Mr.S.M.Shah, learned advocate for the respondents - original landlords. I have also gone through the judgments of both the courts below and perused the record of the case.

7. Mr.Sompura, learned advocate for the petitioner has argued that, bonafide requirement of the plaintiffs could not have been believed. Learned appellate Judge has considered the evidence of the plaintiffs and the defendant in detail and has also found that the defendant has got vacant room nearby the suit house which is sufficient accommodation. It is in the evidence of the plaintiffs that, Bai Jabu and her son Bhikha is married and they have to sleep outside. The plaintiff No.2 has two sons, namely Hasu and Haku. The plaintiffs have given detail evidence about requirement with proper description of the property and both the courts have considered the evidence on record and found that the plaintiffs' requirement is bonafide and genuine. It is also found that, if the decree of eviction is passed, the defendant will not suffer hardships as the defendant has got already another premises in his possession. This court while deciding civil revision application cannot reappraise the evidence and concurrent findings of fact cannot be disturbed by this court, and therefore, when both the courts have found the requirement of the plaintiffs as genuine, no interference of this court is called for in the revision application. Mr.Sompura also could not point out any thing against the aforesaid findings of fact.

8. So far as the alternative accommodation is concerned, it is found that the defendant has acquired alternative accommodation and the better one than the suit premises. When the defendant has got his own premises, he should have gracefully vacated the suit premises. The courts below have considered the dimensions of the rented premises as well as the premises which the defendant has acquired and ultimately appreciated all the evidence and it has been found that the defendant has acquired the alternative accommodation. Therefore, I do not find any error of law in the order of the appellate court or even that of the trial court. Civil Revision Application is without substance and requires to be dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

9. Mr.Sompura at this stage requested for granting reasonable time to vacate the suit premises. Civil Revision Application is of the year 1983 and the suit was filed as back as in 1977. Mr.S.M.Shah, learned advocate for the respondents has no objection, if reasonable time is given. In the facts and circumstances of the case, I direct that the decree for possession shall not be executed till 31.10.2000. The aforesaid time is granted on condition that the petitioner shall file usual undertaking before this court within six weeks from today stating that he is in exclusive possession of the suit premises and without raising any obstruction he will hand over the vacant and peaceful possession to the respondents on or before the aforesaid date. The petitioner shall also pay regularly the means profits every month to the respondents. If, the aforesaid undertaking is not filed within the stipulated time, it will be open for the respondents - plaintiffs to execute the decree for possession forthwith.

(P.B.Majmudar,J.)

(pathan)